

NOTICE OF ADOPTED SUMMARY RULEMAKING

The Administrative Procedure Act allows an agency to use the summary rulemaking procedure instead of the regular rulemaking procedure for repeals of rules made obsolete by repeal or supersession of an agency's statutory authority or the adoption, amendment, or repeal of rules that repeat verbatim existing statutory authority granted to the agency. An agency initiating summary rulemaking shall file the proposed summary rulemaking with the Governor's Regulatory Review Council and the Secretary of State's Office for publication in the next available issue of the *Register*. The proposed summary rule takes interim effect on the date of publication in the *Register*.

NOTICE OF ADOPTED SUMMARY RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 36. DEPARTMENT OF BUILDING AND FIRE SAFETY

PREAMBLE

- | <u>1. Section Affected</u> | <u>Rulemaking Action</u> |
|----------------------------|--------------------------|
| Article 3 | Repeal |
| R4-36-301 | Repeal |
| R4-36-302 | Repeal |
| R4-36-303 | Repeal |
| R4-36-304 | Repeal |
| R4-36-305 | Repeal |
| R4-36-306 | Repeal |
| R4-36-307 | Repeal |
| R4-36-308 | Repeal |
2. The specific authority for the rulemaking including both the authorizing statute (general) and the statutes the rules are implementing (specific):
Authorizing and Implementing statute: A.R.S. § 41-2198.
3. The effective date of the summary rules:
December 26, 1997.
4. The name and address of agency personnel with whom persons may communicate regarding the rule:
Name: Cheryl Groeper
Address: 99 East Virginia, Suite #100
Phoenix, Arizona 85004
Telephone: (602) 255-4072
Fax: (602) 255-4962
5. The concise explanatory statement, including an explanation of the rule and the agency's reasons for initiating it:
A.R.S. § 41-1027(A)(1) authorizes use of summary rulemaking when an agency's rules become obsolete by supersession of the agency's statutory authority. In the 1997, Arizona Legislative Session, Senate Bill 1461 repealed the statutory authority of the director to promulgate rules relating to the Arizona Mobile Home Parks Hearing Officer function in A.R.S. § 41-2198. Laws 1997, Ch. 221, § 206. The amended version of A.R.S. § 41-2198 vest the authority to adjudicate complaints arising out of the Arizona Mobile Home Parks Residential Landlord and Tenant Act to the Office of Administrative Hearings. Because the Department of Building and Fire safety does not have authority for the rules at 4 A.A.C. 36, it is necessary to repeal them.

The Department received no written comments. There are no changes in text between the Proposed Summary Rulemaking and the Adopted Summary Rulemaking.
6. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:
Not applicable.
7. The economic, small business, and consumer impact:
Not applicable pursuant to A.R.S. § 41-1055(D)(2).

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- 8. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:
Not applicable.
- 9. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule:
No oral proceedings or hearings were held and no oral or written comments were received.
- 10. An explanation of why summary proceedings are justified:
A.R.S. § 41-1027(A)(1) authorizes use of summary rulemaking to repeal rules that have become obsolete by supersession of the agency authority. In the 1997, Arizona Legislative Session, Senate Bill 1461 repealed the statutory authority of the director in A.R.S. § 41-2198 to promulgate rules relating to the Arizona Mobile Home Parks Hearing Officer function. Laws 1997, Ch. 221, § 206. A.R.S. § 41-2198 now provides that the Office of Administrative Hearings shall adjudicate complaints arising out of the Arizona Mobile Home Parks Residential Landlord and Tenant Act. Because the Department of Building and Fire Safety does not have authority for the rules at 4 A.A.C. 36, it is necessary to repeal them.
- 11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
None.
- 12. Incorporations by reference and their location in the rules:
None.
- 13. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 36. DEPARTMENT OF BUILDING AND FIRE SAFETY

~~ARTICLE 3. HEARINGS: LANDLORD AND TENANT HEARING PROCEDURE~~

Section

- ~~R4-36-301. Commencement of action~~
- ~~R4-36-302. Notice of Hearing~~
- ~~R4-36-303. Appearance and practice before department~~
- ~~R4-36-304. Prehearing conference~~
- ~~R4-36-305. Hearings~~
- ~~R4-36-306. Evidence~~
- ~~R4-36-307. Consolidation~~
- ~~R4-36-308. Continuance~~

~~ARTICLE 3. HEARINGS: LANDLORD AND TENANT HEARING PROCEDURES~~

~~R4-36-301. Commencement of Action~~

- ~~A. A hearing may be commenced by a landlord or tenant, pursuant to the remedies provided in A.R.S. § 33-1401, et seq.~~
- ~~B. An action commences upon the filing of a petition, which cites to the specific statutes and states the circumstances upon which the alleged violations are based.~~

~~R4-36-302. Notice of Hearing~~

- ~~A. Petitioners: If there are three petitioners or less, then notices shall be mailed to all petitioners by certified mail. If there are more than three petitioners, then the petitioners shall designate three of these petitioners to act as representatives for purposes of notice only.~~
- ~~B. Respondents: If the named respondent is a landlord, the department shall serve notice upon the named owner by certified mail. If the owner has not been disclosed to the tenants, the department shall serve notices to the named management company or property manager. If the named respondents are tenants, the department shall serve notice upon every named tenant by certified mail.~~

~~R4-36-303. Appearance and Practice Before Department~~

- ~~A. Notice of appearance: Petitioners and respondents may represent themselves. When an attorney appears before the Hearing Officer in a representative capacity, the attorney shall advise the Hearing Officer of the attorney's name, address and telephone number and the name and address of each individual and entity on whose behalf the attorney appears.~~
- ~~B. Filing of motions: Any motions pertaining to a hearing shall be filed with the Hearing Officer in writing, provided, however, that motions during a hearing may be oral. In the case of prehearing motions, any party may file an answering memorandum within ten days after service upon the party of such motion or such other time period as prescribed by the Hearing Officer. No oral argument shall be heard on such matters filed prior to the commencement of the hearing unless the Hearing Officer so directs.~~

~~R4-36-304. Prehearing Conference~~

~~The Hearing Officer, upon the request of either party or upon the Hearing Officer's own motion, may conduct a "prehearing conference" prior to the opening of the hearing. The conference will not be recorded; however, the results of the conference may be evidenced in the record in the form of an agreement, stipulations or concessions. No prejudice will ensue to any party unwilling to participate in or make stipulations or concessions during any prehearing conference.~~

~~R4-36-305. Hearings~~

- ~~A. The Hearing Officer shall rule upon procedural and evidentiary matters. The Hearing Officer may question witnesses. Upon motion of any party, a witness may be excluded from the hearing by the Hearing Officer prior to that witness' testimony.~~
- ~~B. All motions and objections made during the course of a hearing shall be made on the record and shall state the grounds of objections relied upon.~~
- ~~C. Hearings are recorded under the direction of the Hearing Officer who shall retain control of the record following conclusion of the hearing.~~

Notices of Adopted Summary Rulemaking

R4-36-306. Evidence

- A.** All witnesses at a hearing shall testify under oath or affirmation. The Hearing Officer may request that the parties make an opening and closing statement. Evidence in support of the charges shall be presented first, then the respondent may present evidence in support of respondent's position, and then there may be rebuttal. The parties may present evidence and conduct cross-examination. The Hearing Officer shall rule upon the admissibility of evidence. All exhibits offered in evidence shall be numbered by the offering party. A copy of each exhibit shall be provided to the Hearing Officer and the other parties at the time the exhibit is offered. It is each party's responsibility to have its exhibits in order, prenumbered and copies made prior to hearing.
- B.** Petitioners and respondents have the right to subpoena witnesses or documents:
1. The party requesting the subpoena shall serve the subpoena.
 2. A person to whom a subpoena is directed may, prior to the time specified therein for compliance but in no event more than five days after the date of service of such sub-

poena, move the Hearing Officer to quash or amend the subpoena, accompanying such motion with a brief statement of reasons therefor. The Hearing Officer shall rule on the motion.

R4-36-307. Consolidation

By order of the Hearing Officer, proceedings involving a common question of fact or a common respondent may be consolidated for hearing of any or all of the matters at issue where such consolidation may tend to avoid unnecessary costs or delay.

R4-36-308. Continuance

The Hearing Officer may continue commencement of a hearing to a subsequent time and place upon request therefor by any of the parties to the proceeding or upon the Hearing Officer's own motion. Following such initial adjournment of the hearing date, no further adjournments shall be granted the requesting party except for compelling circumstances and upon written motion, addressed to the Hearing Officer accompanied by a full statement of the reasons therefor.